

FACTS

Taxpayer is a domestic corporation wholly owned by Company. Taxpayer was formed to serve as an interest charge domestic international sales corporation ("IC-DISC") and has established a commission arrangement with Company. Taxpayer was formed on Date 1 in State.

Taxpayer relied on Accounting Firm to make the necessary election to qualify Taxpayer as an IC-DISC. Accounting Firm prepared Form 4876-A and as a result of an oversight, noted an incorrect due date on the transmittal letter to Taxpayer. The correct due date was Date 2 and Accounting Firm noted a date three days after Date 2. The election was filed two days after Date 2.

Taxpayer and Accounting Firm became aware of the late filing when Taxpayer received a notice from the IRS on Date 3. Accounting Firm then advised Taxpayer to make a new IC-DISC election to be effective for the next calendar year. The new election was filed on Date 4. The IRS rejected the second election as being late because the filing deadline for already existing corporations is 90 days before the beginning of the taxable year. After the second rejection, Accounting Firm recommended that the best course of action to remedy the situation was to seek a private letter ruling.

Taxpayer has requested a ruling that grants an extension of time of 60 days from the date of the ruling letter to file Form 4876-A and that such filing will be treated as a timely election to be treated as an IC-DISC for Taxpayer's first taxable year.

LAW AND ANALYSIS

Section 992(b)(1)(A) provides that an election by a corporation to be treated as a DISC¹ shall be made by such corporation for a taxable year at any time during the 90-day period immediately preceding the beginning of the taxable year, except that the Secretary may give his consent to the making of an election at such other times as he may designate.

Temp. Treas. Reg. § 1.921-1T(b)(1) provides, in part, that a corporation electing IC-DISC status must file Form 4876-A. A corporation electing to be treated as an IC-DISC for its first taxable year shall make its election within 90 days after the beginning of that year.

Treas. Reg. § 301.9100-1(c) provides, in part, that the Commissioner, in exercising his discretion, may grant a reasonable extension of time under the rules set forth in Treas. Reg. §§ 301.9100-2 and 301.9100-3 to make a regulatory election under all subtitles of the Code (except subtitles E, G, H, and I).

¹ As used in this letter, the terms "IC-DISC" and "DISC" have the same meaning.

Treas. Reg. § 301.9100-1(b) provides that a regulatory election is an election whose due date is prescribed by a regulation published in the Federal Register, or a revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin. For this purpose, an election includes an application for relief in respect of tax.

Treas. Reg. § 301.9100-3(a) provides that requests for extensions of time for regulatory elections that do not meet the requirements of Treas. Reg. § 301.9100-2 (automatic extensions) must be made under the rules of Treas. Reg. § 301.9100-3. Requests for relief subject to Treas. Reg. § 301.9100-3 will be granted when the taxpayer provides the evidence (including affidavits described in Treas. Reg. § 301.9100-3(e)) to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that the grant of relief will not prejudice the interests of the Government.

Based on the facts and representations submitted with Taxpayer's ruling request, we conclude that Taxpayer satisfies Treas. Reg. § 301.9100-3(a). Accordingly, Taxpayer is granted an extension of time of 60 days from the date of this ruling letter to file Form 4876-A. Such filing will be treated as a timely election to be treated as an IC-DISC for Taxpayer's first taxable year.

The granting of an extension in this ruling letter is not a determination that Taxpayer is otherwise eligible to make the election or to claim IC-DISC status or benefits. See Treas. Reg. § 301.9100-1(a). Taxpayer should attach a copy of this ruling letter to its Federal income tax return for the taxable years to which this letter applies.

This ruling is directed only to the taxpayer that requested it. Section 6110(k)(3) of the Code provides that written determinations may not be used or cited as precedent. Except as expressly provided herein, this ruling neither expresses nor implies any opinion concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this ruling letter.

Pursuant to a Power of Attorney on file in this office, copies of this ruling letter are being furnished to your authorized representatives.

Sincerely,

Marissa K. Rensen
Assistant to the Branch Chief, Branch 6
Office of the Associate Chief Counsel
(International)

cc: